IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10023 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHAJAUDIN FAIJUDIN MALEK

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 10023 of 2002

MR MA KALATHIL for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-4

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/01/2003

ORAL JUDGEMENT

#. By way of this petition, the detenu has challenged his detention order dated 20.5.2002. By the impugned

order, the detenu is detained by the District Magistrate, Vadodara, in exercise of the powers conferred upon him under section 3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "cruel person" as defined by Section 2(bbb) of the Prevention of Anti-social Activities (Amendment) Act, 2000 and is required to be detained under the preventive detention, so that, he may not continue with such type of cruel activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of one criminal case, which is registered at Rangpur Police Station, being I CR.No.41 of 2002 dated 3.5.2002 under sections 429, 153-A, 295 and 114 of the Prevention of Cruelty to the Animals Act. It is alleged against the petitioner-detenu that the petitioner has killed one cow with an object to hurt communal feelings of Hindu community in the area. Along with the detention order, certain statements of witnesses were also supplied and those witnesses have not given their names by way of safety reasons. In view of the statements of the witnesses as well as in view of the aforesaid criminal case, the petitioner is branded as a "cruel person" and is detained under the PASA.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, there is no reason on the part of the petitioner to act in such manner, which may disturb the communal harmony. It is also submitted that, the petitioner was in judicial custody in connection with the criminal case lodged against the petitioner at the relevant time. Therefore, the detaining authority has merely stated that the petitioner is likely to be released on bail when there is no material in that connection. It is submitted that, the detaining authority, at least, was required to mention in the order about his satisfaction as to how the petitioner is likely to be released on bail. For that purpose, learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 6 and 7 observed as under.:

" .... .... .....

"4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of

this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxxx xxxx xxxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent

material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

xxxx xxx xxxx"

#. Considering the fact that the detaining authority has merely mentioned that the petitioner is likely to be released on bail without discussing anything further in this behalf and in view of the aforestated judgment of the Apex Court, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 20.5.2002 is quashed and set aside. The detenu Shajaudin Faijudin Malek is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)